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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

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THE AMERICAN SUGAR REFINING COMPANY,
PLAINTIFF IN ERROR,

versus

THE STATE OF LOUISIANA AND JOHN BREWSTER,
STATE TAX COLLECTOR, SECOND DISTRICT, NEW ORLEANS, DEFENDANTS IN ERROR.

On Writ of Error to the Supreme Court of the State of Louisiana.

BRIEF ON BEHALF OF THE AMERICAN SUGAR REFINING COMPANY, PLAINTIFF IN ERROR.

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STATEMENT OF THE CASE.

This suit was brought in the Civil District Court of New Orleans by the State of Louisiana against The American Sugar Refining Company to recover the sum of $3,500.00 per year as a State license tax for each of the years 1892, 1893, 1894, 1895, 1896 and 1897, with 2% per month interest from March 1st of each year, and 10% attorneys' fees, for carrying on the business of refining sugar and molasses. (Rec. pp. 1, 2).

The defenses made in the answer are briefly (Rec. pp. 4, 5):

1. That defendant is a sugar refiner and that sugar refining is manufacturing, and that defendant as a manufacturer is exempt from license taxation under Art. 206 of the Constitution of Louisiana of 1879;

2. That if such business is not a manufacturing business, then it is a mechanical pursuit, and as such exempt by the same article of the Constitution;

3. That if the business of sugar refining is not a manufacturing business and for that reason exempt, then that the Act No. 150 of 1890, of the General Assembly of Louisiana, under which the tax is claimed, violates the Constitution of the United States and is void in so far as it attempts to impose a license tax on defendant, because said Act denies to defendant the equal protection of the laws of the State, inasmuch as said Act does not impose equally a license tax on all persons engaged in the business of refining sugar and molasses, but discriminates in favor of planters who refine their own sugar and molasses and in favor of planters who granulate syrups for other planters during the rolling season, and therefore said Act conflicts with the Fourteenth Amendment of the Constitution of the United States, which prohibits any State from depriving a person of his property without due process of law and from denying to any person within its jurisdiction the equal protection of the laws.

Upon the trial the following uncontradicted facts were established (Rec. pp. 14-24):

The raw sugars, cane and beet, upon being received are first melted in vessels specially constructed and adapted

for that purpose called "melters." All raw sugars, whatever the grade, are subjected to this process and without it there can be no refining. (Rec. pp. 14-15).

The melted sugar is pumped to the topmost floor of the refinery to other vessels called "blow-ups." Here suitable re-agents are introduced into the liquid, the effect of which is to coagulate the impurities in the mass and by such coagulation render the succeeding process of filtering through bags more effective. In these blow-ups the liquid is also brought to the proper density and degree of temperature by the introduction of steam sufficient to accomplish the purpose. (Rec. p. 15).

From the blow-ups the liquid is passed into bag filters, entering at the open end and filtering through the cloth; the result of this first filtration is to remove much of the dirt and foreign matter—the insoluble mechanical impurities—from the liquid mass. (Rec. p. 16).

These filter bags are from time to time washed and compressed in the "scum press," the result being to save the sugar adhering to them and in the dirt, and to remove the dirt from the bags so that they may be again used; and the record shows (p. 18) that the defendant Company procures as much as twelve to fifteen tons a day of this refuse in the refining operations of its New Orleans refinery.

After the bag-filtration the clarified and partially filtered liquid is next filtered through bone-black filters. These are large metal retorts nearly filled with powdered animal bone-black, which decolorizes and purifies by taking up the salts and impurities, soluble and free, which have resisted the process of bag-filtration; and from them the liquid sugar comes clear as crystal. (Rec. p. 17).

The bye-process of renovating or revivifying the bone-black—an expensive item in the refining process—is accomplished by burning out as much as possible of the impurities and foreign matter which the bone-black has taken up. This is done in the kilns designed for that purpose. Notwithstanding this revivifying process, the bone-black gradually becomes ineffective for filtering purposes, and fresh

bone-black must be added from time to time to keep the mass up to the required standard. (Rec. p. 17).

The next direct step in refining proper is the re-crystallization of the now purified liquid sugar. From the bone-black filters the liquid is passed into closed copper vessels or pans, and is there boiled in a vacuum in the vessels which are known as "vacuum pans" or "finishing pans." (Rec. p. 18).

In the boiling, the grain of the sugar is formed from the liquid mass and is built up by the sugar-boiler in charge of the operation, by the exercise of most expert skill and judgment, until it has reached the size, large or small, which is proper for the particular kind of refined product designed to be produced, as the different kinds of ultimate product turned out require different sized crystals. (Rec. p. 19).

When the grain has been built up to the desired size, the entire contents of the "finishing-pan" are liberated and passed into the centrifugal machines, which is technically called making a "strike." This mixed mass of grained and ungrained sugar is called "magma."

The centrifugal machine is cylindrical in shape and the magma is introduced within it. The machine is then revolved rapidly, perhaps a thousand revolutions per minute, and the liquid of the magma is forced by centrifugal action through the screen-like lining of the machines and separated from the grained sugar, which is left within the machine. (Rec. p. 19).

The liquid so thrown off is carried back and again subjected to the boiling process in the vacuum pan, until all the sugar in it which can be economically crystallized out has been obtained from it. The remaining uncrystallizable liquid, which contains too much of impurity to justify the saving of the sugar in it, comes out commercially as molasses.

Going back to the grained sugar left in the centrifugals, we find there a mass of absolutely white sugar, not yet, however, thoroughly dried.

Thereafter the treatment differs according to the ultimate

products to be produced. These products are, in this refinery, four in number:

(1) *Cube or block* sugar is made by taking the sugar as it comes from the centrifugal machine and pressing it by hot air pressure in the "cube machine." The cubes are thereafter further dried in ovens, which process completes the extraction of moisture, and they are then ready for packing as a final product. (Rec. pp. 19-20).

(2) "*Confectioners A*" sugar is a kind designed to supply a particular trade or use. The grain of this product is designedly formed larger in the finishing-pan than for the other kinds, the processes up to and including the centrifugaling being otherwise the same. After machining in the centrifugal this product is ready for the market. The percentage of moisture is greater than in the other final products as no further drying process is applied; otherwise its purity is the same as in the other products. (Rec. p. 21).

(3) "*Granulated sugar*" is made by passing the grained sugar from the centrifugals into a revolving drum or cylinder, called a "granulator," into which hot air is introduced. The result is the removal of all moisture and the polishing of the grain by friction, giving it a bright, sparkling appearance. The granulator is also provided with a sifting appliance whereby uniformity in the size of grain of the final product is attained. (Rec. p. 20).

(4) "*Powdered sugar*" or "*pulverized sugar*" is used particularly for crystallizing fruits, etc. The granulated sugar is introduced into the pulverizing machine, which consists of a series of discs; these are revolved with great rapidity, with the result of reducing the grain to a fine, dust-like powder. (Rec. p. 20).

(5) To these products may be added the *molasses* procured from the liquid thrown off by the centrifugal machines, and hereinbefore mentioned. (Rec. p. 22).

Another bye-process of some magnitude, which enters largely into the economy of refining, is the process of evaporating the "sweet water"—the washings from the bag-filters containing more or less sugar. The apparatus is called a "Lily Evaporator" (Rec. p. 21) and accomplishes

the result of economically evaporating the surplus water from the liquid, whereby the latter is brought to the proper degree of density for being put through the successive refining steps of clarification, bag-filtration, bone-black filtration, crystallization in the finishing-pan, machining in the centrifugal and then according to the particular kind of product desired to be produced.

All raw sugars, whatever their grade or test, are subjected to the same process (Rec. p. 14). The melting of the sugar, its purification in liquid form and subsequent re-crystallization, are the essentials of all refining operations and have ever been so, though different methods of detail in the accomplishment of the final result have been in the past, and are now, practiced. The processes in general use to-day are more complex than in former years and a better result is attained, but the underlying principles are the same.

Defendant refines no molasses, the molasses obtained being merely a bye-product of the refining of sugar. (Rec. p. 23).

The value of the raw sugar is largely increased by the refining operations. The extended uses to which the refined product is put are detailed in the record and is matter of common and judicial knowledge.

Defendant had judgment in its favor in the Civil District Court, which judgment was reversed by the Supreme Court of Louisiana, and judgment was there rendered in favor of the plaintiff for the sum claimed with interest and attorney's fees, holding defendant not to be a manufacturer, and that the act under which the license tax was claimed was not unconstitutional.

Defendant sued out a writ of error to this Court, which was duly perfected.

THE ASSIGNMENT OF ERRORS

is as follows (Rec. p. 66):

1. The Supreme Court of Louisiana has erred in holding that the provisos of section nine of the Act of the General Assembly of Louisiana, by which planters are not subjected to the license tax imposed by that section, do not discriminate against the plaintiff in error, and thereby deny to it the equal protection of the laws secured to all persons by the fourteenth amendment of the Constitution of the United States.

2. Said Court erred in holding that the business of sugar refining conducted by the plaintiff in error was not the business of a manufacturer of sugar, and therefore exempt from the payment of license taxes.

3. Said Court erred in holding that the State was entitled to proceed by rule for the enforcement of the license taxes set forth in said rule.

The pertinent portions of the Louisiana Constitution, and of Act No. 150 of 1890, are as follows:

"ART. 206. The General Assembly may levy a license tax, and in such case shall graduate the amount of such tax to be collected from the persons pursuing the several trades, professions, vocations and callings. All persons, association of persons and corporations pursuing any trade, profession, business or calling may be rendered liable to such tax, except clerks, laborers, clergymen, school teachers, those engaged in mechanical, agricultural, horticultural and mining pursuits and *manufacturers*, other than those of distilled, alcoholic or malt liquors, tobacco, cigars and cotton seed oil. No political corporation shall impose a greater license tax than is imposed by the General Assembly for State purposes." *Constitution of Louisiana of 1879, Art. 206.*

Act No. 150 of 1890:

"AN ACT

"To levy, collect and enforce payment of an annual license tax upon all persons, associations of persons, or business firms and corporations, pursuing any trade, profession, vocation, calling or business, except those who are expressly excepted from such license tax by Articles 206 and 207 of the Constitution.

"*Section 1.* Be it enacted by the General Assembly of the State of Louisiana, That there is hereby levied an annual license tax for the year A. D. 1891, and for each subsequent year, upon each person, association of persons or business firms and corporations, pursuing any trade, profession, vocation, calling or business except those expressly exempt from such license tax by Articles 206 and 207 of the Constitution.

"*Sec. 2.* Be it further enacted, etc., That on the second day of January, A. D. 1891, and each subsequent year, each tax collector through the State shall begin to collect and shall collect as fast as possible from each of the persons or business firms, associations of persons and corporations pursuing within his district or parish any trade, profession, vocation, calling or business, a license tax as hereinafter graduated.

"All licenses shall be due and collectible during the first two (2) months of each year, and all unpaid licenses shall become delinquent on the first day of March of each year, and all firms who commence business after that date shall become delinquent unless the license is paid within ten days.

"*Sec. 3.* Be it further enacted, etc., That the annual license for all kinds of business hereinafter named, except as afterward provided, shall be graduated in twenty-five classes.

"MANUFACTURERS.

"*Paragraph 1.* That for carrying on each business of manufacturing not expressly exempted by Articles 206 and 207 of the Constitution, the license shall be based on gross annual receipts of said business as follows, to-wit:

"First Class (etc., etc.)

" * * * *

"Twenty-fifth Class (etc., etc.)

"*Provided*, nothing herein shall be construed to apply to the business of grinding meal, ginning cotton or making sugar by any farmer or planter.

* * * * * *

"*Sec. 9.* Be it further enacted, etc., That for carrying on each business of gaslight, electric light, water works, telegraphing, (including local and district telegraph), telephoning, express company, cotton compress or ginnery, cotton pickery, slaughter house, distilling and rectifying alcoholic or malt liquors, brewing ale, beer, porter or other malt liquors, manufacturing tobacco, cigars or cigarettes, refining sugar and molasses, manufacturing cotton seed oil, oil cake or cotton seed meal, the license shall be based on the gross annual receipts of each person, association of persons, business firm or corporation engaged in said business, as follows: provided, that this section shall not apply to planters and farmers grinding and refining their own sugar and molasses or ginning their own cotton or that of their tenants, or manufacturing their own cotton seed into meal, cake or oil, or work by machinery for plantation or farm purposes; provided, that no license shall be imposed or collected on cotton gins ginning for hire not over four hundred bales of cotton per annum; and provided further, that it shall not apply to those planters who granulate syrup for other planters during the the rolling season.

"First Class—When the said gross annual receipts are two million five hundred thousand dollars and over, the license shall be three thousand five hundred dollars ($3500)."

* * * * * *

Act No. 150 of 1890.

ARGUMENT ON THE MOTION TO DISMISS.

The motion to dismiss is grounded upon the contention that no necessary Federal question is involved in the suit.

This contention, we submit, is obviously without merit. If the Act No. 150 of 1890 be unconstitutional as set up in defendant's answer, the defense is complete, in whatever manner the other defenses may be disposed of.

The cases cited by counsel for defendant in error are those in which the defense, other than that based on a Federal question, is broad enough to support the decision of the State Court, however the Federal question involved may have been decided.

If the Act of the Louisiana Legislature in question be unconstitutional as claimed, it is a complete defense to the entire suit. A decision on the Federal question raised by the answer is absolutely necessary for a determination of the issues made.

There is, we submit, no ground for the motion to dismiss.

The motion to affirm involves a discussion of the constitutionality of the Act of the Louisiana Legislature, which is embraced in our argument upon the merits.

Argument on the Merits.

The issues embraced in this controversy are:

I. Is defendant's business of sugar refining a manufacturing business, or is it not?

II. Does the Act No. 150 of the General Assembly of Louisiana of 1890 contravene the Fourteenth Amendment to the Constitution of the United States?

I. Sugar Refining is Manufacturing.

Defendant's operations in the refining of sugar conform to the general practice, so that for the purposes of this dis-

cussion we may assume that the question at issue is whether the processes of refining sugar constitute a manufacture.

It is uncontradicted that defendant employs vast and varied machinery, with skilled and unskilled labor, and that the refining processes necessarily require many changes in the form and quality of the raw material used in producing the refined product. These several steps and the physical changes which the raw material undergoes have already been set forth at length, and are matters of common knowledge.

The argument is made against the contention of defendant that it is a manufacturer, that the refining processes are practically the same as a washing or scouring of the raw material whereby the dirt and impurities are removed. This contention has no foundation in fact.

In the first place, no washing can produce the result sought to be, and actually, accomplished. It is an undisputed fact, that in all refining processes, whatever the grade of raw sugar used, it is absolutely essential that the sugar be liquified by melting, purified in a liquid state and then recrystallized into sugar.

After being melted, the liquid is brought to the proper degree of density, a coagulant is introduced, filtration through the bag filters is had, then filtration through the bone-black filters; the liquid is then boiled in a vacuum, whereby an absolutely new grain, which had no prior existence, is formed, controlled as to size by the skill and design of the sugar boiler; the mass of grained sugar is then dried in the centrifugal machines, which separate the uncrystallized liquid from the grain; and the grained

sugar is then variously treated according to the particular kind of refined product desired, all as above set forth.

An absolutely new and different article, which did not before exist, has been produced. The various finished products have distinctive commercial names, and are fit for uses to which the raw sugar could not be put, and made more fit for those uses to which raw sugar might, in some sort, be put.

It is difficult to conceive how it can be seriously contended that the process of refining, starting with the liquid mass of melted sugar and ending with the beautifully white and chemically pure final products, is not a manufacturing process. The melting of the sugar is the indispensable first step—really a step backward, the step by which the beginning is reached—in all refining processes now, and from the earliest times; the liquified raw sugar is the raw material, which the refiner purifies by elaborate processes, and finally converts into the commercial article ready for use.

If the raw material were customarily procured by the refiner in a liquid state, there would be no question, we apprehend, but that the refiner, who buys the liquid sugar and turns out the refined product, is a manufacturer. How then is he the less a manufacturer when he buys the raw material in a state one step removed from a liquid, one step further away from the final product, and has to put it through the additional process of melting in order to reduce it to a proper form to begin the refining process upon?

It will not be denied that the making of raw sugar from the extracted juice of the cane or the beet is a manufac-

ture. If such juice were wholly freed of its impurities by processes similar to those used by defendant or otherwise, so that the first crystallization would be a refined product, such refined product also would unquestionably be a manufactured article.

If, instead of taking the cane-juice or beet-juice as the raw material to be purified and crystallized into sugar, the refiner begins his operations on liquid raw sugar as the raw material to be refined and crystallized, is he any the less a manufacturer than he who manufactures the sugar from the other liquid raw material—the juice of the cane or the beet?

If there is any difference between the two, it is only that the one may require more elaborate treatment than the other, as the percentage of sugar in the juice is less than in the melted raw sugar. But surely the processes detailed in the record are varied and extensive enough and the changes of form of the material used sufficiently great, to entitle the process as a whole to claim the dignity of a manufacture, even although other manufactures may require more varied processes and more elaborate appliances and machinery. Many manufactured products, as the authorities hereinafter cited show and as a matter of common knowledge, are produced with but slight changes of form of the raw material and with but little hand-labor or machinery.

To illustrate by analogy, the producer of steel is unquestionably a manufacturer. He may buy the pig-iron in a completely manufactured state, melt it, subject it to his particular steel-making process and obtain steel, his manufactured product. Or he may have his own blast furnace

and run the molten product of the blast furnace directly to his converter, without going through the intermediate, and to him unnecessary, step of producing the pigs. In either case, equally, he is a manufacturer of steel. The re-melting of the pig-iron in the first case is actually a backward step, but a necessary one, to get to the point of beginning the steel-making process.

So with sugar refining; it is as impossible to produce the refined product from the raw sugar, without the latter being liquified, purified in the liquid state and recrystallized into the final product, as it is to make steel from crude pig-iron without liquifying the iron and subjecting it in that state to the processes necessary to produce the steel. And the sugar refiner who produces the refined product from the liquified raw sugar, whether that raw material had ever before been crystallized or not, is as logically and as certainly a manufacturer as the producer of steel from the crude molten iron, whether that iron had ever before been crystallized into pigs or not.

We shall cite the authorities in support of defendant's contention that it is a manufacturer without further extended argument, relying upon: (1) The dictionary and judicial definitions; (2) Analogy to other industries held to be manufactures; and (3) The direct authority of popular, scientific, legislative and judicial interpretation.

(1) GENERAL DEFINITION.—Considered as a question of first impression, the definitions of "manufacture" given by the dictionaries and courts, in common understanding, include defendant's business.

MANUFACTURE is defined:

"The process of making anything by art, or of reducing materials into a form fit for use by the hand or machinery." *Worcester's Dictionary.*

"The production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties or combinations, whether by hand labor or by machinery; used more especially of production in a large way by machinery or by many hands working co-operatively." *Century Dictionary.*

"Anything made for use from raw or prepared materials." *Idem.*

MANUFACTORY.—"Any place where articles for use or consumption are regularly made." *Idem.*

"A manufacturer is not one who creates out of nothing, for that would surpass human power; neither is he one who produces a new article out of materials entirely raw. He is one who gives new shapes, new qualities, new combinations to matter which has already gone through some artificial process." *City vs. LeBlanc, 34 La. An. 597.*

"A manufacturer is defined to be one who is engaged in the business of working raw materials into wares suitable for use; who gives new shapes, new qualities, new combinations to matter, which has already gone through some artificial process." *City vs. Ernst, 35 La. An. 746.*

"The word 'manufacture' means the making of anything by hand or artifice. Railroad Co. vs. Fulgham, 91 Ala. 555; 8 South. Rep. 803. Mr. Worcester's Dictionary defines 'manufacture' as 'the process of making anything by art, or of reducing materials into a form fit for use by the hand or by machinery.' The definition that the word is given by the Century Dictionary is as follows: 'The production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties, or combinations, whether by hand labor or by machinery.' According to the above definitions of the word 'manufacture,' we are constrained to consider and declare an electric light company a manufacturing corporation to all intents and purposes. It is no answer to this argument to say that electricity exists in a state of nature, and that a corpora-

tion engaged in the electric light business collects or gathers such electricity. This does not fully or exactly express the process by which such corporations are able to make, sell and deliver something useful and valuable. The electricity that exists in nature is of a very different quality from that produced by means of machinery. The business in which an electric light company is engaged makes it necessary to invest large capital in the plant; and there is purchased and consumed coal and other materials to produce steam in order to furnish the power for the operation of the machinery. Then there is supplied and operated a complicated system of machinery, like that commonly used in manufacturing establishments, such as boilers, engines, dynamos, shaftings, beltings, etc., and then, by means of wires, cables and lamps, the mysterious power generated by the machinery used from the materials furnished is transmitted, and lights the streets and private houses. But the electric currents that produce these results cannot be said to be 'the free gifts of nature, gathered from the air or the clouds.' It is the product of capital and labor, and in this respect cannot be distinguished from ordinary manufacturing operations." *Beggs vs. Edison Electric Light Co., 96 Ala. 295.*

"If the question whether a corporation engaged in the business of furnishing electricity for lighting public and private places, or for power, is a manufacturing company, was made to depend upon the meaning of these words as found in dictionaries, or upon the technical language of science in describing electricity as a power, or as an agent in nature, it would doubtless be difficult, and perhaps impossible, to show that the process which relator calls 'manufacturing' produces anything that, in a certain sense, and in some form, did not exist before. That, however, is true of most if not all manufacturing operations. The application of labor and skill to materials that exist in the natural state gives to them a new quality or characteristic, and adapts them to new uses; and the process by which this result is brought about is called manufacturing, whether the change is accomplished by manual labor or by means

of machinery. But we think that these considerations are by no means conclusive in determining the true scope and meaning of the terms, 'manufacturing corporations,' as they are used in the statute.

"The true inquiry would seem to be whether a corporation organized as this is and carrying on the business that this does and in the manner shown, would not be considered in common language as engaged in some manufacturing process, or carrying on some manufacturing business, though granting all that is said by experts and others about electricity as a natural element of force." *People vs. Wemple, 129 N. Y. 553.*

"The primary meaning of the word 'manufacture' is something made by hand, as distinguished from a natural growth; but, as machinery has largely supplanted this primitive method, the word is now ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. Ordinarily the article so manufactured takes a different form, or at least subserves a different purpose, from the original materials, and usually it is given a different name. Raw materials may be, and often are, subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product. Thus, logs are first manufactured to boards, planks, joists, scantlings, etc., and then by entirely different processes are fashioned into boxes, furniture, doors, windows, sashes, trimmings, and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but by a large number of processes or transformations, each successive step in which is a distinct process of manufacture, and for which the article so manufactured receives a different name." *Tide Water Oil Co. vs. U. S., 171 U. S. 216.*

Considering the extent and character of the machining processes employed by defendant, the number and variety of changes through which the raw material passes and the

qualities and forms of the finished product, and the uses for which fit, as compared with the raw material, we submit that, in common understanding, the business of defendant is a manufacturing business and none other.

(2) ANALOGY to other lines of business held to be manufacturers, establishes this also as one.

TOBACCO. The manufacture of tobacco furnishes a striking analogy. There is no question about chewing and smoking tobacco and snuff being manufactured articles. The U. S. Revised Statutes and the Louisiana Constitutions of 1879 (Art. 206), and 1898 (Art. 229), call them manufactures.

The process of manufacture converts the raw material—leaf tobacco—into the manufactured articles, by removing stems and dirt, improving the color, drying or moistening, perhaps sweetening some kinds, and compressing, granulating, fine-cutting or pulverizing, according to the use for which intended.

The parallel with sugar refining is complete. The substance of the manufactured tobacco is still tobacco, it is called by no new name, and is used for the same purposes as the leaf tobacco, though rendered more fit for those uses.

The process of manufacturing tobacco accomplishes the same result as the refining of sugar; though it is much simpler, requires less machinery and the raw material never loses its original identity; *a fortiori*, then is the refining of sugar a manufacture.

SAW MILLING—The cutting of rough lumber from logs

—is manufacturing. *State vs. A. Wilbert's Sons L. & S. Co., 51 La. An. 1223.*

Sawn lumber is still in substance wood and the logs may be put to the same uses as the lumber, though not as fit, therefor. Weather boards, flooring, etc., are in turn manufactured articles (see cases cited in *Wilbert's case, supra*); they are manufactured from the rough lumber, their substance is still wood, and they are put to no uses to which the rough lumber could not be put, though made more fit for such uses.

DYEING AND BLEACHING OF CLOTH is manufacturing. *Johnson vs. Somerville Dyeing and Bleaching Co., 15 Gray (Mass.) 216 (218).*

SALT. The production of salt, by process of evaporation, is a manufacture. *East Saginaw Salt Mfg. Co. vs. East Saginaw, 13 Wall. 376; Salt Co. of Onondaga vs. Wilkinson, No. 12,269 Federal Cases; Central Ohio Salt Co. vs. Guthrie, 35 Ohio St. 666.*

KINDLING WOOD. The splitting, drying and bundling of kindling wood is a manufacture. *People, Standard Wood Co. vs. Roberts, 47 N. Y. Supp. 122.*

OIL REFINING is a manufacturing process.

"Among the purposes for which the defendants incorporated themselves were 'refining oil, coal and other minerals and preparing them for use.' They were therefore strictly a manufacturing corporation." *Hawes vs. Anglo-Saxon Petroleum Co. 101 Mass. 385 (396).*

PORK-PACKING is manufacturing.

Engle vs. Sohn, 41 Ohio St. 691; 52 Am. Rep. 103.

STAVES, rough split by hand, are manufactured articles. *United States vs. Hathaway, 4 Wall. 404 (408).*

SPLIT TIMBER, to be used in making shovel handles, is

a manufactured product. *United States vs. Quimby, 4 Wall. 408.*

RICE MILLERS who simply hull, clean and polish rice are manufacturers. *City of New Orleans vs. Ernst, 35 An. 746.*

Other analogies, more or less complete, probably exist. We believe that we have cited sufficient to fix the character of defendant's business as a manufacture.

(3) AUTHORITY—Popular and scientific, legislative and judicial—establishes sugar refining as a manufacture.

POPULAR AND SCIENTIFIC AUTHORITY:

"SUGAR REFINING. * * * At present it is an important branch of *manufacture* in most of the principal commercial cities of the United States and Europe." *American Encyclopædia, Vol. XV, p. 446 (Appleton, 1876).*

"The *manufacture* of loaf-sugar is chiefly carried on in London; of crystals, in Bristol and Manchester; of crushed sugar, in Liverpool, Greenock and Glasgow." *Ure's Dic'y of Arts, Manufactures and Mines (London, 1878), Vol. III, p. 943.*

"*Manufacture of Crystals.* The use of centrifugal action for the separation of liquids and solids has been adopted in the arts for many years; * *" *Id. p. 948.*

"*Crushed Sugar.* This process closely resembles the *manufacture* of loaf-sugar, but the raw sugar used is generally of an inferior quality." *Id. p. 948.*

"*Manufactures of United Kingdom exported.* Refined sugar and candy, 1,119,542 cwt." *Id. Vol. IV, (sup.) p. 847.*

"The Refining of sugar is the leading *manufacture* in the City of New York. No other employs so much capital, or yields so large a product. * *" *Bishop's History of American Manufactures (1868), Vol. III, p. 150; and Vol. II, p. 593.*

"Refined sugar and chocolate were among the extensive

and prosperous domestic *manufactures.*" *Id. Vol. II, p. 41.*

"ANNALS OF MANUFACTURES. * * * The quantity of refined sugar sent out of the refineries during the year (1800) was 3,349,896 pounds, and the gross amount of duties thereon was $66,998." *Id. Vol. II, p. 83.*

"The *manufacture* of Refined Sugar in the Eastern and Middle States kept pace with the increase of population. * * *" (as to year 1816). *Id. Vol. II, p. 220.*

"KENTUCKY FACTORIES. A large Sugar Refinery was put in operation in May (1813), at Louisville, Ky." *Id. Vol. II, p. 247.*

Sugar refining is classified as one of the *manufactures* of New York and Brooklyn. *Id. Vol. II, p. 585.*

"Looking at the manufacture of sugar in a broad way, it may be said to divide itself first into the production of crude sugar from the cane and from beet, the materials alone employed upon the largest scale and treated by methods careful and economical enough to deserve consideration as scientific industries, while these methods necessarily differ with the different character of the two materials. Then, as a large proportion of the crude sugar so obtained is, in other hands, and often in other countries, carried through an elaborate process of purification, *sugar refining becomes a distinct branch of the manufacture*, as in a comparatively simple way it has been from time immemorial in India, practiced there by one caste receiving the supply of 'goor,' or crude, moist sugar from another." *U. S. International Exhibition, 1876, Vol. IV,—Reports and Awards,—pp. 18-19 (Report of Dr. J. W. Mallet).*

"Refined *manufactured* from raw sugar." (Statistics). *Id. p. 82.*

"The sugar so made (*i. e.* loaf sugar) is almost absolutely pure; as a rule there is not more than 0.1 to 0.3 per cent. of impurity (including moisture) in it, and whether the raw sugar used in its *manufacture* be 'beet' or 'cane,' it is

equally pure." *British Manufacturing Industries* (*Bevan, 1876*), *p. 128.*

The Factory Returns of Great Britain and Ireland classify sugar refineries as *factories. Id.* "*Industrial Classes and Industrial Statistics,*" *p. 196.*

Lock & Newlands, in their elaborate treatise, "*Sugar, a Handbook for Planters and Refiners,*" (*London, 1888*), *at pp. 611 and 654,* designate sugar refining as a *manufacture.*

"The immediate product of the first boiling of the cane juice is known as gurh or rab, according as the sugar is boiled down to a hard mass, or allowed to remain in a semi-liquid condition. Both gurh and rab contain some uncrystalized syrup. Gurh as a rule is intended for home consumption, and is comparatively seldom used in the *manufacture* of refined sugar." (Sketch of early refining in India). *Johnson's Universal Cyclopædia, Vol. VII, tit. Sugar, p. 807.*

"*Manufacture* of Refined Sugar." (Title of article describing process of refining raw sugars). *Tomlinson's Cyclopædia of Useful Arts and Manufactures, Vol. II, p. 785.*

"The improvements introduced into the processes of sugar refining allow loaf sugar to be now sold at a price so little exceeding that of raw sugar, that the *manufacture* has lately vastly increased." *Knight's Cyclopædia of Industry, p. 1628.*

"A considerable quantity of the imports (*i. e.,* of raw sugar) is converted into refined sugar, a *manufacture* which forms an important branch of industry in Britain; * * *" *Waterston's Cyclopædia of Commerce, p. 639.*

"Ninety establishments are especially engaged in refining the first product extracted from beetroot, or from the sugar cane; about 180,000 tons of raw sugar are received annually from the colonies, French and foreign, by these refining establishments, which employ 3400 workers. The yearly value of the *manufacture* amounts to 140 millions of francs." *Enc. Brit.* "*France,*" *Vol. IX, p. 521* (*9th Ed.*)

"But to return to the subject of sugar refining.

"In commencing the study of this *manufacturing* operation, it will be useful to consider the theoretical indications to be followed out." *Debow's Review* (*Reprint, 1856*), "*The Southern States*"—*Sugar, p. 239.*

"Instead of the deep charcoal cistern, some *manufacturers* employ shallow tanks of iron or lead." *Id., p. 241.*

If, instead of loaves, the *manufacturer* desired to obtain the material known as crushed lump, the contents of the moulds would never be stoved at all." * * * *Id., p. 246.*

"There is a considerable affectation prevalent among refiners of considering their *manufacture* absolutely perfect." *Id., p. 247.*

"The largest single *manufacturing* industry in New Orleans is that of sugar refining. * * * The American Sugar Refining Company's plant in New Orleans is one of the largest *manufacturing* establishments in the country, and the third sugar refinery in size." *Rightor's History of New Orleans* (*1900*), *p. 528.*

THE *Eleventh Census* of the United States (1890) classifies sugar and molasses refining under the title, "*Manufacturing Industries,*" *Part 1, p. 108*, and elsewhere.

In the same (ELEVENTH CENSUS, 1890), *Part II of Manufacturing Industries, p. XXXVI*, "Sugar and Molasses Refining" is classified as the principal *manufacturing* industry, by gross value of product, in the several cities of Philadelphia, Brooklyn, San Francisco and New Orleans.

LEGISLATIVE AND JUDICIAL INTERPRETATION bear out the conclusion that sugar refining is a manufacture.

Coxe vs. Pennington (*1 Wash. C. C. 65*), *No. 3,311, Federal Cases:*

WASHINGTON, Circuit Justice, says: "The question then is, whether upon refined sugars, not sent out of the house where they were *manufactured*, on or before the 3d of June, the duties had accrued and then remained outstanding? * * * The sugar refiner is to report his house and the implements employed in his *manufactory.*"

Pennington vs. Coxe, 2 Cranch, 33:

"Sugar refined but not sold and sent out of the *manufactory* before the 1st of July, 1802, is not liable to any duty upon being sent out after that day." *p. 33.*

"This was a feigned issue between Tench Coxe, a citizen of the State of Pennsylvania, and Edward Pennington, a citizen of the State of New York, to try the question, whether sugar actually refined, but not sold and sent out of the *manufactory*, before the 1st of July, 1802, is liable to any duty to the United States upon being sent out after that day." *Id. p. 33.*

This case involved consideration of the effect of the Act of Congress of April 6, 1802, repealing the internal revenue duty on refined sugar imposed by Act of June 5th, 1794.

CHIEF JUSTICE MARSHALL delivered the opinion of the Court, saying in part:

"* * * The fifth section (*i. e.* of the Act of June 5, 1794), after making several regulations requiring the refiner of sugars to report the building and utensils to be employed in the *manufacture*, * * * proceeds to enact that he shall," etc. *Id. p. 51.*

And again: "The object of the act imposing the duty being revenue, and not to discourage *manufactures*, it is reasonable to suppose that the attention of the Legislature would be devoted to the article in that state in which it was designed to be productive of revenue." *Id. p. 54.*

Again: "If A becomes the debtor by the mere act of refining, then he remains the debtor until he shall be legally discharged. Suppose him to part with his *manufactory* and his capital stock, there being at the time of transfer a quantity of refined sugars in the building, which pass with it to the purchaser." *Id. p. 56.*

Again: "With respect to the refiners of sugars, then, it must, on an inspection of the act, emphatically be said that the Legislature designed him to collect the duty from the consumer, but never to pay it from the *manufacture;* that

the tax should infallibly be imposed on expense, and never on labor." *Id. p. 62.*

Again: "The refiner, who is, in a different place, the retailer of sugar, must be considered as selling them from the *manufactory*, when he sends them out of it to his retail store." *Id. p. 63.*

Act of June 5, 1794 (1 U. S. Stat. 384 et seq.):

"An act laying certain duties upon snuff and refined sugar.

"Sec. 7. And be it further enacted, That every *refiner of sugar* shall make oath * * * that the accounts, which have been by him or her rendered, or the quantities of *refined sugar* by him or her sent out of the house or building, where the same shall have been *manufactured*, or procured, or caused so to be sent out, have been just and true."

"Sec. 10. And be it further enacted, That all snuff and refined sugar, which shall have been *manufactured* or made within the United States in manner aforesaid, shall," etc., etc. (be seized if tax not paid).

"Sec. 14. And be it further enacted, That from and after the thirtieth day of September next, no drawback of the duties upon any *manufactured* tobacco or snuff or *refined sugar*, which shall have been imported into the United States, * * * shall be allowed. * * * *"

"Sec. 20. And be it further enacted, That it shall be lawful to export, directly from any *manufactory* of snuff or *of refined sugar* to any foreign port or place, any snuff or *refined sugar* which shall have been *manufactured* at such *manufactory*, after the 30th day of September next, free from duty. * * * *"

Act of July 24, 1813. (3 U. S. Stat. 35):

"An act laying duties on sugar refined within the United States."

"Sec. 3. (Same as Sec. 7 of Act of June 5, 1794, above quoted)."

"Sec. 6. And be it further enacted, That all *refined sugar*, which shall have been *manufactured* or made within the

United States, etc." (shall be seized under certain conditions).

Act of Aug. 30, 1842. (5 U. S. Stat. 563):

"Sec. 14. And be it further enacted, That on and after the day this law goes into effect, there shall be allowed a drawback on *foreign sugar refined* in the United States, and exported therefrom, equal in amount to the duty paid on foreign sugar from which it shall be *manufactured*, to be ascertained," etc., etc. (under regulations to be prescribed).

Act of March 3, 1863. (12 U. S. Stat. 716):

"*Sugar refiners* shall pay one and one-half of one per cent. on the gross amount of the sales of all the products of their *manufactories.* * * *"

Referring to the proviso of St. Mch. 3, 1875, ch. 127, Sec. 3 (18 U. S. Stat. 339), which amends Sec. 3019 U. S. Revised Statutes, *Gould and Tucker* in their *Notes on the Revised Statutes*, say (Vol. 1, p. 636) :

"The proviso applies to all refined sugars *manufactured* from imported sugars, notwithstanding the other provisions of the chapter in which it is found."

14 Opin. Atty. Gen. 578 (Geo. H. Williams, Atty. Gen.) :

"Drawback on Refined Sugars."

"Thus construed, that proviso unquestionably applies to all refined sugars *manufactured* from imported sugars, irrespective of the other provisions contained in said Act of March 3, 1875." *p. 578.*

This opinion was in answer to the following from the Secretary of the Treasury :

"Does the increase in the amount to be retained from the drawback allowance on refined sugars, enacted by Section 3 of the Act of March 3, 1875, apply to all exportations of refined sugars *manufactured* from imported sugars, when such exportations are made subsequently to the passage of the Act, or only to exportations of refined sugars *manufactured* from crude sugars paying the increased rate of duty prescribed by the Act itself ?" *Id. p. 578.*

The Attorney General reached the conclusion that the proviso applied to all refined sugars exported, saying in conclusion:

"It (*i. e.* the proviso) is an amendment of Section 3019 of the Revised Statutes, and must be construed in connection with that Section, and not in connection with the Act of March 3, 1875; and, so construed, it operates as an exception or proviso in the former statute, and the two, in effect, enact that ten per centum on the amount of all drawbacks allowed by the Statute shall be retained for the use of the United States, provided that of the drawback on refined sugars only one per centum of the amount so allowed shall be retained. So construed, there can be no question that the provision applies to all refined sugars *manufactured* from imported sugars, without reference to the Act of 1875." *Id. p. 580.*

People vs. The North River Sugar Refining Co., 54 Hun (N. Y.) 354:

"A *manufacturing* corporation which with other corporations and individuals, enters into, and gives control of the business to a trust association * * * will be dissolved. * * *" *p. 354.*

"In an action brought by the State to vacate the charter of a *manufacturing* corporation, organized under the general manufacturing act (chap. 40 of the laws of 1848), it appeared that the corporation, while engaged in the business of refining and selling sugar, syrups and molasses, entered into a combination with certain other corporations and individuals engaged in the like *manufacture.* * * *" *Id. p. 354.*

"The judgment from which this appeal has been brought dissolved the defendant as a corporation previously formed and existing under the laws of this State. It was organized under chapter 40 of the laws of 1848 as a *manufacturing* corporation and its business was generally that of refining and selling sugar, syrup and molasses. It was incorporated for this object in February, 1865, and continued to

carry on the business until the close of the year 1887. Before that time, but in that year, a plan was formed and adopted for the formation of what was called the Sugar Refineries Company, to go into effect on the 1st of October, 1887. Its general object was to bring together the parties and corporations engaged in the *manufacture*, refining and sale of sugar. * * *" *Id. pp. 356, 357.*

The Court uses the term *"manufacturers"* in reference to the above business (*Id. p. 384*), and the expressions *"manufacture* of refined sugar" (*Id. p. 385*), and "Usefulness as a *manufacturing* competitor" (*Id. p. 385*); and further says:

"Instead of *manufacturing* its product and disposing of it to the public on what might be fair competitive prices, it had become a party to a combination, in part, at least, designed to create a monopoly, and exact from the public prices which could not otherwise be obtained." *Id. p. 386.*

In *United States vs. E. C. Knight Co., 156 U. S. 1*, we find:

"The American Sugar Refining Company, a corporation existing under the laws of the State of New Jersey, being in control of a large majority of the *manufactories of refined sugar* in the United States, acquired, through the purchase of stock in four Philadelphia refineries, such disposition over those *manufactories* throughout the United States as gave it a practical monopoly of the business. *Held*, that the result of the transaction was the creation of a monopoly in the *manufacture* of a necessary of life, which could not be suppressed under the provisions of the Act of July 2d, 1890."

CHIEF JUSTICE FULLER delivered the opinion of the Court, and, from the opinion, we extract the following:

"By the purchase of the stock of the four Philadelphia refineries with shares of its own stock, The American Sugar Refining Company acquired nearly complete control of the *manufacture of refined sugar* within the United States." *Id. p. 9.*

"The fundamental question is, whether, conceding that the existence of a monopoly in *manufacture* is established, the monopoly can be directly suppressed under the Act of Congress in the mode attempted by this bill." *Id. p. 11.*

"The argument is that the power to control the *manufacture of refined sugar* is a monopoly over a necessary of life. * * *" *Id. p. 12.*

"The object was manifestly private gain in the *manufacture* of the commodity, but not through the control of interstate or foreign commerce." *Id. p. 17.*

And in numerous other places the Chief Justice refers to the business as being a manufacturing business.

MR. JUSTICE HARLAN dissented in the *Knight* case, and, in the course of his dissent, said:

"In its consideration of the important constitutional question presented, this Court assumes on the record before us that the result of the transaction disclosed by the pleadings and proof was the creation of a monopoly in the *manufacture* of a necessary of life." *Id. p. 18.*

"It has been argued that the combination between corporations of different States, or between the stockholders of such corporation, which the object and effect of controlling not simply the *manufacture* but the price of refined sugar through the whole of the United States—which is the case now before us—cannot be held to be in restraint of 'commerce among the States' and amenable to national authority, without conceding that the general government has authority to say what shall and what shall not be *manufactured* in the several states." *Id. p. 33.*

In other portions of his dissent Justice Harlan repeatedly uses the word "manufacture" in reference to the business under consideration; it is unnecessary to quote at length. The quotations above amply show that this Court accepted without question the conclusion that the business was a manufacturing business, and it is to be observed that the

case actually hinged upon the fact that sugar refining was a manufacturing business.

In subsequent judicial references to the above decision, in *United States vs. Trans-Missouri Freight Association, 166 U. S. 290 (326); United States vs. Addyston Pipe and Steel Co., 78 Fed. 712 (721);* in same, *85 Fed. 271 (296, 297), (54 U. S. App.);* and in *Addyston P. & S. Co. vs. United States, 175 U. S. 211 (238-240),* repeated use has been made of the words "manufacturer" and "manufacture" in reference to the sugar refiner and his product.

Like use of the expression is made by Prof. E. W. Huffcut in his recent article, "Federal Control of Corporations:"

"As was held in the Knight case (156 U. S. 1), the anti-trust law does not extend to a combination for the *manufacture* of sugar, because manufacture is not trade or commerce. Congress, therefore, could not suppress a monopoly for the *manufacture* of sugar, because manufacture is not trade or commerce." *34 Am. Law Review, 191.*

Even Mr. William J. Bryan testifies—unwillingly perhaps—in support of the definition for which we contend. In his recent so-called Anti-Trust letter, published in the daily press, Mr. Bryan, in criticism of the President, says:

"He does not refer to the Sugar Trust case, which nullified the law of 1890 so far as manufacturing monopolies are concerned. In that case the Court drew a distinction between a monopoly in manufacture and a monopoly in interstate commerce, and held that the law did not prohibit a monopoly in manufacture. * * * The language used by the Court in condemnation of Federal interference with manufacturing conducted within a State is so strong that Justice Harlan assumes that the Court would hold unconstitutional any amendment of the present law aimed at

monopoly in manufacture." (N. O. Times-Democrat, Jan. 11, 1900).

In a resolution recently (Feb. 19, 1900) offered in the House of Representatives, the words "manufacture," "manufactured" and "manufacturer" are used no less than ten times in referring to the refining of sugar, the refined product and the refiner, respectively.

In *Union Sugar Refinery vs. Mathiesson et al., 3 Cliff. 639, Fed. Cas. No. 14,399*, the question was as to the infringement of a certain patent relating to the cleansing and purifying of sugar in the process of refining. Mr. Justice Clifford, in charging the jury, twice used the word "manufacture" to denote the process of refining sugar. (*24 Fed. Cas. pp. 693, 696*).

In considering a case which concerned the Louisiana Sugar Refining Company (which was succeeded by the present defendant), CHIEF JUSTICE BERMUDEZ, of the Supreme Court of Louisiana, said:

"The object of this suit is to annul the permission which the City of New Orleans has granted the defendant Company to lay water pipes from its *factory* to the Mississippi River, under municipal direction and control. * * *" *N. O. Waterworks Co. vs. The Louisiana Sugar Refinery Co. et al., 35 La. An. 1111.*

"The defense is that the defendant Company, in common with all other inhabitants, has an inalienable right to draw water from the river for their own use and supply; * * * that the defendant Company has not supplied, and does not intend to supply, the City or any inhabitant of the City of New Orleans, with water through its pipes, which are exclusively for its own use and for its *manufacturing* purposes." *Id. 1111.*

"In March, 1883, the City Council authorized the defendant Company to erect its *factory* and to lay water

and sewerage pipes therefrom to the river. * * *" *Id. 1112.*

"The City and the defendant Company claim only that the former had a right to grant, and the latter has that to enjoy, the permission of laying pipes and conduits from the river to its *factory*, for the sole purpose of supplying itself with river water for its own purposes, and for no other." *Id. 1114.*

"It cannot be doubted for an instant that * * * she (the City) had the right of permitting the defendant Company to lay pipes and conduits across the quay and through the streets, from the river to within its *factory* limits, for the purposes of supplying itself with the water needed for its objects." *Id. 1114.*

On writ of error to this Court, in the same case, MR. JUSTICE GRAY, delivering the opinion of the Court, said:

"The evidence supported all the allegations of fact in the petition, except that the acts of the Louisiana Sugar Refining Company, and the situation of its *factory* in relation to the river, were proved to be as follows: The Company was constructing a *factory* on its land bounded by Front, Clay, Bienville and Customhouse Streets, and had begun to lay water and sewerage pipes, exclusively for the use of its *factory*, and according to lines and grades furnished by the City Surveyor, from its *factory* straight to the river. * * *" *N. O. Waterworks Co. vs. Louisiana Sugar Refining Co., 125 U. S. 18 (22).*

"The Supreme Court of Louisiana * * * in its opinion * * * recapitulated * * * the ordinance, passed by the city council in 1883, granting to the Louisiana Sugar Refining Company authority to lay pipes from its *factory* to the Mississippi River. * * *" *Id. p. 23.*

"The only matter complained of by the plaintiff, as impairing the obligation of the contract contained in its charter, was an ordinance of the city council granting to the Louisiana Sugar Refining Company permission to lay pipes from the river to its *factory*. * *" *Id. p. 26.*

"The Louisiana Sugar Refining Company in its answer

alleged that its *factory* was contiguous to the river. * *" *Id. p. 27.*

"The evidence showed that the pipes of the defendant Company were being laid exclusively for the use of its *factory*. * * *" *Id. p. 27.*

"That opinion, as printed in 35 La. An. 1111, * * * shows that the grounds of the judgment were: that * * * the city was authorized to permit the defendant Company to lay pipes across the quay and through the streets from the river to its *factory*, for the purpose of supplying it with water for its own use." *Id. pp. 27, 28.*

"The only grounds on which the plaintiff in error attacks the judgment of the State Court are * * * in not adjudging that the ordinance of the city council, granting to the defendant Company permission to lay pipes from its *factory* to the river, was void because it impaired the obligation of that contract." *Id. p. 28.*

"The arguments at the bar were principally directed to the question whether, upon the facts proved, the *factory* of the defendant Company was contiguous to the river." *Id. p. 28.*

EXTRACT FROM CITY ORDINANCE OF NEW ORLEANS, adopted March 13th, 1883, and approved March 15th, 1883, set forth in above, (*125 U. S. 21*):

"Be it ordained that permission be, and is hereby, granted to the Louisiana Sugar Refining Company to erect all necessary machinery, boilers and engines in their *factory* in course of construction in the square bounded by Front, Clay, Bienville and Customhouse Streets, and to lay water and sewerage pipes from said *factory* to the Mississippi River. * * *"

ORDINANCE (CITY OF NEW ORLEANS) No. 4003, C. S., Sept. 24, 1889, approved Sept. 30, 1889:

"Be it ordained, That permission be and is hereby granted to the Louisiana Sugar Refining Company to erect all necessary machinery, 220 horse-power boilers, engines, etc., in their *manufactory*, now in course of construction in

the square, bounded by Customhouse, Wells, Crossman and Front streets. * * *"

Act No. 101 of 1890 (Louisiana):

"Making it a crime to maliciously destroy, injure or damage, or to attempt to destroy, injure or damage any sugar mill, cotton gin, rice mill, or any machineries or apparatus forming part of or attached to any manufactory in this State, and providing a punishment therefor.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That if any person shall wilfully and maliciously cut, break or destroy, or damage, with intent to destroy and render useless any engine, machinery, mill or apparatus, making part of or attached to *any sugar mill or refinery*, rice mill, cotton gin, press *or other factory*, the property of another, such person shall, on conviction, be imprisoned at hard labor, or otherwise, not exceeding two years, and fined not exceeding five hundred dollars, at the discretion of the Court."

Lastly, the CIVIL CODE of Louisiana, itself, if there were no other authority, would seem to settle the question beyond contention:

"Things which the owner of a tract of land has placed upon it for its service and improvement, are immovable by destination.

"Thus the following things are immovable by destination when they have been placed by the owner for the service and improvement of a tract of land, to-wit: * * *

"The utensils for working cotton and sawmills, taffia distilleries, *sugar refineries and other manufactures.*" *Revised Civil Code, Art. 468.*

The same provision occurs also in the Louisiana Civil Codes of 1808 and 1825.

The citations which we have furnished above show conclusively, we submit, that popular and scientific writers, legislators and judges, State and National, have all used

the word "manufacture" as including within it the process of sugar refining, and that they have not been able to express themselves concerning this process except by using the word "manufacture" to denote it. It is such use of words, and such use only, which forms definitions.

Such are the authorities. There is not a line nor a word to the contrary save the decision of the Louisiana Court in *State vs. American Sugar Refining Co., 51 La. An. 562* (Rec. pp. 42-62), which was decided without reference to the direct authorities above cited, but solely upon the Court's conception of the general definition and the pertinence of analogies cited by it.

The theory of that decision is that a sugar refiner is not a manufacturer, because his product is still sugar and is called by no new name. As to the latter the Court was clearly in error as to the facts, as the refined product has its distinctive commercial names—"Cube," "Granulated," "Powdered," "Confectioner's A"—each of which is distinctive from the other and from the raw material. If a member of that Court were to ask in a store for a "pound of sugar," he would scarcely get it without specifying the distinctive name of the article he wished. No more than he would get his tobacco, unless he specified the kind—fine-cut, granulated, plug-cut, or plug.

Is not manufactured tobacco still tobacco in material substance? Is it not still called tobacco with the addition of an adjective to denote the kind of manufactured product? Are not staves and rough lumber still wood? Are not shoes still leather, and stoves iron?

If it be contended that the cases and statutes cited,

although they use the terms "manufacture," "manufactured," "manufacturer," and "manufactory," in reference to the process, product, producer and establishment, respectively, are not of authoritative force, because the question of manufacture *vel non* was not presented, it may be answered that they assumed the conclusion as one which had never been and could not be controverted.

Furthermore, an exactly similar precedent was relied upon by Mr. Justice Watkins in *State vs. A. Wilbert's Sons L. & S. Co., 51 An. 1223*, when he says in support of the Court's conclusion, that a saw-mill is a manufactory: "But it is worthy of notice that in Improvement Co. vs. Browne, *supra* (45 An. 459), saw-mills and planing mills were mentioned specifically as 'manufactories.'"

In its opinion in this case, the Court said that defendant "is not a manufacturer *in the sense of* Article 206 of the Constitution of 1879." Necessarily it held defendant not to be a manufacturer in any sense. For if it be a manufacturer in any sense, it is exempt from license tax, as there is no room for limiting or restricting the language of the Constitution, nor was there any apparent purpose to do so. The Constitution exempts *all* manufacturers except those specially excepted.

As said in *Wilbert's case, 51 An. 1223 (1231)*: "Under the former (Art. 229 of the Constitution of 1898, identical with Art. 206 of the Constitution of 1879), *all* manufacturers *eo nomine*, and all persons engaged in mechanical pursuits, are exempted from license taxation, other than those excepted."

And in *Weckerling's case, 38 An. 37:* "We have heretofore held that the Constitution clearly exempts from license tax *all* manufacturers not excepted."

Also in *Washburn's case, 43 An. 226:* "It will be observed that *all* manufacturers are, in terms, excepted, unless they are included within the express reservation of that Article (206)."

So in the *Ernst case, 35 An. 746 (747):*

"The Constitution clearly exempts *all* manufacturers not excepted. The excepted ones are: those who manufacture alcoholic or malt liquors, tobacco and cigars and cotton seed oil. As the defendants do not come within the exclusion, it is manifest that the license claimed cannot be recovered."

And in the *Sugar Co.'s case* itself, *51 An. 562 (569):*

"Under the provisions of this Article (*i. e.* Art. 206 of Constitution of 1879), *any* manufacturer is exempted from license tax, unless he be a manufacturer of liquor, tobacco, cigars and cotton seed oil. Hence the answer claims the exemption granted to *all* manufacturers not included in the exceptions just mentioned." (Rec. p. 46).

The Court in fact considered the question as being whether or not defendant was a manufacturer in common understanding and found that "defendant is not a manufacturer, in the general and common acceptation of that term." *51 An. 586.* (Rec. p. 59).

It is plain, therefore, that all who are manufacturers, in the common and ordinary acceptation of the word, are exempt.

Can there be any doubt, upon the authorities cited, but that the business of sugar refining is a manufacturing business, not only in common understanding, but in scientific, legislative and judicial understanding as well?

The decision of the Supreme Court of Louisiana upon this point, was as to a definition of a word in common use,

in the vernacular language, and we respectfully submit that it was erroneous.

But it may be contended that the decision of the Louisiana Court was upon the interpretation or construction of the State Constitution, and therefore as binding upon this Court as the State Constitution itself.

We concede the law to be that the construction by a State Court of its own State Constitution becomes practically a part of the Constitution in the absence of any claim that the State Constitution so construed is obnoxious to any provision of the Federal Constitution.

In the present case, however, so far from any question of interpretation or construction of the State Constitution arising, both the plaintiff and defendant contended for exactly the same construction of the State Constitution, and the Court concurred in that construction.

The Act in question purports to levy a license tax upon sugar refiners. There is no question as to the interpretation of the Act. Both plaintiff and defendant agree that the Act means what it says. The State Court has left the Act exactly as it found it.

Art. 206 of the Louisiana Constitution of 1879 exempts all manufacturers from license taxation (except those therein specifically excepted). The plaintiff and defendant agree that the Constitution exempts *all* manufacturers, and the Court held that the Constitution exempts all who are manufacturers in the common and ordinary acceptation of that word. No question of the interpretation or construction of the State Constitution was presented or passed upon.

The question before the Court was purely one of defini-

tion: Is or is not a sugar refiner a manufacturer? It was not, and is not now, contended that the word *manufacturer* has any different meaning in the Louisiana Constitution from what it has in the vernacular language. There is no statute of the State of Louisiana defining or attempting to define the word. It is not claimed that the word has any peculiar meaning in Louisiana by reason of statute, local law or customary use, different from what it has throughout the country. The Supreme Court of Louisiana did not intimate that this word has any other meaning in the Constitution than that which it has in common use throughout the country. On the contrary, the Court distinctly say that the word is used in the Constitution in its common and ordinary meaning (Rec. p. 59). In reaching its conclusion on the definition of this word, the Court resorted to the authority of other jurisdictions and determined by general definition and analogy what, in its opinion, the true meaning of the word is, not only in Louisiana, but in the language of the country—not only as used in the Louisiana Constitution, but as commonly and generally used in all connections.

The question is therefore, we submit, one of general law and in no sense statutory. Whatever conclusion may be reached on this question of definition, is absolutely unaffected by any statute or local custom or use of the State of Louisiana and is equally as applicable in New York or California as it is in Louisiana. Should a similar question arise in a New York court, that court would resort to exactly the same sources for the determination of the question as did the Supreme Court of Louisiana, supposing, of course, that the State of New York has no statute giving a

statutory definition to the word different from the meaning which it has in the language of the country.

The fact that the question arose in the application of a tax statute of the State of Louisiana was purely accidental and had no bearing upon the determination of the true definition nor upon the sources from which the court sought its law. The question might just as well have arisen in any other connection, and its determination would have proceeded upon exactly the same lines and the law sought for from the same sources, it being conceded by the Court that the word was used in its common and ordinary acceptation and had no special or particular meaning peculiar to the law in which it happened to be found, or to Louisiana jurisprudence.

Illustrations may serve to point our argument.

Let us suppose the State of Louisiana to enact a statute declaring that all servants injured through the negligence of their fellow-servants shall have no recourse for damages against their employer, as is the rule of the common law. Let the question arise in the State Court as to whether, in a particular case, the injured servant and the negligent servant are or are not fellow-servants. Let us suppose that the court gives its definition to the word "fellow-servant" so as to hold that the parties are not fellow-servants. Such a decision would be upon a question of general law and in no sense the construction of a statute.

Now we concede that if a State statute should also undertake to define the word "fellow-servant," such statute would be binding upon the Federal Courts, and the interpretation by the State Court of such statute, being under the law practically a part of the statute, would be equally bind-

ing. But this question is not presented in the case at bar, as all parties, the Supreme Court of Louisiana included, agree that the word as used in the Constitution has only the meaning which it has in the vernacular language and has no peculiar meaning in Louisiana, by statute or otherwise, different from the meaning which it has elsewhere.

Again, let us suppose the statute law of Louisiana to provide that all "makers" of notes shall be bound without protest and notice. If the question should be presented to the Supreme Court of Louisiana as to whether one who has endorsed a note prior to negotiation be or be not a maker thereof, the Louisiana Court would decide, as it has decided, that such person is an endorser and not a maker, and is therefore entitled to protest and notice. Let the same question come before the Federal Court, and, although the application of the same statute be involved, the Federal Court will decide as a question of general law (as in *Phipps vs. Harding, 34 U. S. App. 48*), that such person so endorsing is a maker of the note and not an endorser.

We again concede that if the State statute undertook to define who shall be considered makers of notes and who endorsers, the State Court's interpretation of the State statute would become a part of the statute and be equally as binding as the statute itself. But, in the absence of any such defining statute, the question of definition is a question of general law.

To illustrate again—and we have been at pains to select an illustration which is in every respect parallel with the case at bar: Suppose that the Constitution of the State of Louisiana should provide that all *animals* shall be exempt from taxation, and that a statute should provide that

horses shall be taxed at their cash value. Let the question arise in the State Court as to whether A shall be taxed upon his horse, A claiming the benefit of the exemption granted by the Constitution. The State Court decides that a horse is not an animal and that A must be taxed for his horse. In so deciding, the Court concedes that the word "*animals*" as used in the State Constitution has the common and ordinary meaning given to that word; it does not contend that there is any peculiar meaning given to the word in Louisiana, by statute, custom or otherwise, different from the meaning which the word has in general use in the language of the country.

In the supposed case, the Louisiana Court has therefore decided as a matter of natural history that a horse is not an animal.

Let the same question be presented to this Court and the claim be made that the decision of the Louisiana Court in the supposed case is upon the construction of a statute. Will this Court take its natural history from the Supreme Court of Louisiana, or will it resort for itself to the common sources of information and determine the question? Has there been anything decided by the Supreme Court of Louisiana except a general question of natural history, which, if true in Louisiana, is true throughout the world? We conceive that no one will contend that this Court in such a case would be bound by the decision of the Louisiana Court, although the question of general law involved may have arisen in the application of a tax law of the State.

If, however, there were some statute of the State of Louisiana which established for Louisiana a peculiar statutory natural science different from that of our common

knowledge, and, under such a statute or its interpretation by the State Court, horses were held not to be animals, then this Court might find that in Louisiana, under such statute, horses are not animals. But, in the absence of any statute defining, or attempting to define, the word "animal," this Court will determine that horses are animals as a matter of common knowledge and general law.

If the question before the State Court had been the determination of which one of two or more possible meanings the Louisiana Constitution has, a question of interpretation would have been presented. For instance, if the question in the State Court had been as to whether the word "manufacturer" was used in the State Constitution in its primary sense as "a maker by hand," or in its derived sense as "a maker by hand or machinery," the decision of the State Court on this question would have been final, as the State Court is the peculiar organ for the interpretation of the State Constitution, and the choice of such meanings by the State Court would become practically a part of the Constitution. But in the actual case it was conceded by the Court that there was but one possible meaning fixed and definite to be given to the Constitution, and that meaning was declared to be that all who were manufacturers in the common and ordinary acceptation of the word are exempt from license taxation. We rest upon the undisputed interpretation of the State Court and ask for its application to the case which the record makes.

The Supreme Court of Louisiana held that only those are exempt who are manufacturers in the common and ordinary acceptation of the word; that a sugar refiner is not a manufacturer in the common and ordinary definition of the

word "manufacturer," and therefore that a sugar refiner is not exempt.

The proposition that *all* manufacturers are exempt might have involved the interpretation of the State Constitution; it is, however, agreed by both parties to this suit and by the Court, that all manufacturers are exempt, except those specifically excepted.

The proposition that a sugar refiner is not a manufacturer is a mixed question of law and fact; the facts being undisputed, it becomes a pure proposition of general law, a question of definition. If sugar refiners are manufacturers, they are manufacturers in the State of Louisiana as well as elsewhere. There is no law or statute defining manufacturers in this State, and the Court did not seek to apply any statute in this connection.

We submit, therefore, that in the determination of the question which is presented, the Louisiana Court decided a general question of law, and that it was in no sense a decision on a statutory or a local question. Whatever conclusion is proper in this case is proper in all like cases, in all jurisdictions, in the absence of statutory definition.

II. THE ACT NO. 150 OF THE GENERAL ASSEMBLY OF LOUISIANA OF 1890 IS IN CONFLICT WITH THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, IN THAT IT SEEKS TO CREATE AN ILLEGAL DISCRIMINATION AGAINST SUGAR REFINERS WHO ARE NOT PLANTERS.

The second defense is that the attempted exemption of planters and farmers in the proviso to *Section 9 of Act 150 of 1890* creates a discrimination against defendant which is unconstitutional, as being in conflict with the First

Section of the Fourteenth Article of Amendment to the U. S. Constitution, which provides that no State shall "deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The argument on this branch of the case necessarily assumes throughout that defendant has been found by the Court not to be a manufacturer.

Act No. 150, Section 9, imposes a license tax "on each business of gaslight, * * * refining sugar and molasses, or either of them, * * * as follows: Provided, that this section shall not apply to planters and farmers grinding and refining their own sugar and molasses; * * * and provided further, that it shall not apply to those planters who granulate syrup for other planters during the rolling season."

The Supreme Court of Louisiana in this case, *51 An. 566*, (Rec. pp. 44, 45) held that the proviso to the Act No. 150 of 1890 was not in conflict with the first section of the Fourteenth Amendment, and did not deprive the defendant of the equal protection of the laws.

It is to be remarked that in so deciding the Court did not in any manner touch the point which was actually raised by the answer and presented for adjudication, the decision being based upon a consideration of the proviso to Section 3 of Act No. 150, which had no bearing upon the question at issue, was not pleaded and is different in terms and meaning from the proviso to Section 9, which was the proviso pleaded as being unconstitutional.

The effect of this confusion by the Court of the two provisos is obvious. It invested the proviso to Section 9, which was pleaded as containing the unconstitutional discrimina-

tion, with a meaning which its terms do not give it, by reading into it the words of the proviso to Section 3.

The question of unconstitutionality is, therefore, presented to this Court as a new one. The decision of the State Court, as shown, is not even persuasive authority.

It will be seen that the provisos to Sections 3 and 9 of Act 150 of 1890 are entirely different. The latter allows the exemption to planters or farmers "refining their own sugar." The defendant refines only its own sugars. Hence the basis of classification is, whether the refiner be a planter or be not a planter. The subject matter with reference to which the classification is made is the same in both cases—*i. e.* the refining of one's own sugar.

It is not contended that the State of Louisiana may not favor planters as such over those engaged in other occupations. It is the policy of the State to foster agriculture. Planters are exempted from license taxation while merchants, physicians and lawyers are taxed. The basis of such a classification is reasonable and a proper exercise of legislative power; the whole of one class is included in the exemption and the whole of the other classes are excluded.

But whenever the State undertakes to favor the planter in other occupations than planting, solely because he is a planter, then the attempted classification is arbitrary and becomes obnoxious to the Fourteenth Amendment. The law may discriminate in favor of, and foster and protect, a particular occupation, but must not foster and protect a particular person or class of persons, save with respect to the favored occupation.

If it were the policy of the State to foster the sugar re-

fining business, the State could specifically exempt all sugar refiners from license taxation. But it cannot arbitrarily exempt all sugar refiners who are not planters any more than it can exempt all sugar refiners who are planters.

The classification of sugar refiners into the two subclasses of planters and non-planters is therefore, we submit, purely arbitrary and unreasonable. A planter as such can have no greater rights or exemptions, with reference to other things than his planting operations, than any other person within the jurisdiction of the State: and, if any law of the State attempts to give him more rights and exemptions than it gives to others with regard to the same subject matter, that law exceeds the limitations imposed by the Fourteenth Amendment.

The law is plain that the equal protection guaranteed by the Constitution forbids unequal exactions of any kind, including unequal taxation, and the fact seems equally plain that the Act in question does impose unequal and arbitrary taxation upon all sugar refiners who do not happen to be planters as well.

Class legislation is not in itself unconstitutional. The recognized test of its constitutionality is that a reasonable classification be made and that the whole class of persons subjected to it be treated alike. Apply the test to this law. The class subject to the law are sugar refiners. If it treats all sugar refiners alike, the law is constitutional; if not, then it is unconstitutional. Upon its face, the law in question does not stand the test; it seeks to favor a particular class of sugar refiners, arbitrarily selected, and is therefore void.

The planter who is also a sugar refiner is so because he

manufactures refined sugar from raw sugar. Hence, if such planter is a manufacturer of refined sugar for having refined raw sugars, so defendant is likewise of necessity a manufacturer for having done the same thing.

The proviso to Section 9 (Act 150 of 1890) seeks to exempt the planter from payment of license tax for his refining operations, while imposing a tax upon other refiners for exactly similar operations, which is a denial of the equal protection of the laws and obnoxious to the Fourteenth Amendment.

The law deals with the same subject matter, raw sugars and sugar refiners, in the cases of both the taxed and the exempted refiner. It makes no difference that there may exist a possible difference in the amount of sugars refined.

If the law should read that all sugar refiners shall be exempt except those who are planters, would there be any doubt about its unconstitutionality? Yet the law as it stands is exactly that, *mutatis mutandis*.

A State may make distinctions between classes of persons in its taxation laws, and, to that extent, may discriminate. But the absolute condition of such classification, we submit, is that it shall be based on a reasonable basis and shall apply to the whole of the class affected and not merely to a part. Thus, the State may, as many States do, exempt farmers from license taxation and tax lawyers and physicians, but it is essential to the validity of any such exemption that all farmers shall be equally exempt and all lawyers and all physicians be liable, in such graded classes as may be prescribed. Otherwise, the law would deny to some of the particular class of persons the equal protection of the laws.

Applying this to the law in question, we find that the law purports to tax all sugar refiners as a class and then excepts some of the particular class, to-wit., those who happen to be planters also. This distinction is absolutely without any reasonable basis. The law might as well attempt to tax all lawyers for carrying on their profession and add a proviso that lawyers who are planters as well shall be exempt from the operation of the law.

Nor can it be said that the refining of sugar by a planter is in any sense an incident of his agricultural pursuit. Sugar refining is a separate and distinct business, whether it be a manufacturing business or not. It is carried on customarily at distances more or less great from the place where the raw sugar is produced and it is a matter of judicial knowledge (supported by the authorities herein cited) that an enormous amount of capital is invested in the industry and that the gross value of the product is one of the greatest in this country.

The cotton planter who raises his own cotton and owns a cotton mill also, in which he makes the cotton cloth from the cotton grown by him, is neither more nor less a manufacturer of cotton goods than he who buys the cotton and uses it in his mills.

The manufacturer of stoves may be also a furnace owner and make his own pig iron, but he is, nevertheless, a manufacturer of stoves, notwithstanding he has, himself, produced the raw material from which the stoves are manufactured. He is neither more nor less a manufacturer of stoves than his competitor who owns no furnace and buys his pig iron.

So, the planter who carries on the business of planting

and also carries on the separate business of refining, is neither more nor less a sugar refiner because he happens to be also a sugar planter. He is just as much a sugar refiner as he who buys the raw product and then conducts the process of refining. Both apply their skill, capital, labor and processes to the same thing—raw sugar.

It seems clear to us, therefore, and we respectfully submit, that the law in question, whether the words used in the exemption of planters—"their own sugar and molasses" —be understood as meaning what the plain words import, or being understood as meaning sugar and molasses actually produced by the planter, in either case equally a distinction is made in favor of such planters, not as regards their planting operations, but as regards the separate business of sugar refining, which discriminates in their favor and against all other sugar refiners, with reference to the same subject matter, and is unconstitutional.

The case of *Railroad Co. vs. Ellis, 169 U. S. 150*, is directly applicable. The Texas statute considered in that case sought to make a discrimination against a particular class of debtors, to-wit: railroad companies, by allowing an attorney's fee to be taxed as costs in a certain class of cases. This Court held that the discrimination was unconstitutional, in that it did not apply to all debtors and sought to place a burden upon a particular class of debtors without any just basis of discrimination. Other pertinent authorities are cited and reviewed in the above case, which it is unnecessary to cite at length.

It is unquestioned that the State may make laws which bear peculiarly upon certain classes of persons and particularly upon those who owe public duties to the State,

in the exercise of its police powers. But such laws must bear equally upon all persons subject to them, and must be based upon some reasonable ground of discrimination bearing a just relation to the subject matter of the law.

The State may select its objects of taxation, but having selected, must tax all of the selected class. If it tax sugar refiners, it must tax all sugar refiners in graded classes.

R. R. Co. vs. Walker, 47 Fed. Rep. 681, is directly in point. The State of North Dakota had selected lands as an object of taxation. It provided a different mode for taxing lands of Railroad Companies from that applicable to other lands. Judge Caldwell, in holding the law unconstitutional, said:

"Property of the same kind, in the same condition, and used for the same purpose, must be taxed by a uniform rule without regard to its ownership. The legislature having selected land as a subject of taxation, all lands under the same conditions are subject to be taxed. The law for the taxation of lands must operate equally und uniformly upon all lands, the condition and use of which are similar. While property may be classified for the purpose of taxation, between the subjects of taxation of the same class there must be equality. Property of the same kind, and in the same condition, and used for the same purpose, cannot be divided into different classes for purposes of taxation, and taxed by a different rule, because it belongs to different owners. But this is precisely what the act under consideration seeks to do. It exempts the lands of the company from taxation simply and solely because they belong to the company, and taxes all other lands by a uniform rule according to their value. It was not competent for the legislature either under the organic act or the fourteenth amendment of the Constitution of the United States, to classify the lands in the territory, for purposes of taxation, into lands owned by railroad companies and lands owned

by all other persons, and declare that the former should not and the latter should be taxed." *p. 686.*

The above language is in the main approved by this Court in *McHenry vs. Alford, 168 U. S. 666,* though the conclusion on the whole case is different.

In re Grice, 79 Fed. Rep. 627, is also in point. This case involved consideration of the constitutionality of the Texas Anti-Trust of 1889. One clause of the act exempted from its operation agricultural products and live-stock in the hands of the producer or raiser. This was held by Judge Swayne to be unconstitutional class legislation, in that it made a discrimination in favor of the favored trust without any just basis. The decision is lengthy and contains expressions peculiarly applicable to the instant case, especially on pages 645, 646, 647, 648 and 649, to which we respectfully refer. Upon writ of error to this Court, the judgment was reversed on a point of practice only. (*169 U. S. 284*).

Union Sewer Pipe Co. vs. Connelly, 99 Fed. 354, involved practically the same point in the Illinois Anti-Trust statute. Judge Kohlsaat held that the law was in conflict with the Fourteenth Amendment, because producers of agricultural products and live-stock were exempted from the operation of its provisions.

In *Santa Clara County vs. Southern Pacific R. R. Co., 118 U. S. 394,* the question was presented as to the constitutionality of a statute of California, prescribing the method of taxing railroad property. The right of a State to tax railroad property by a rule different from that applied to other property was upheld, but it was also held that the property so taxed must be such property as is peculiarly

used for railroad purposes. It was sought to tax the fences of the Railroad Company under the statute, but this Court held that the railroad fences could not be taxed in a manner different from other fences in the State.

The concurring opinion of Mr. Justice Field in the companion case of *San Bernardino County vs. S. P. R. R. Co., 118 U. S. 422*, is especially appropriate to the contention of defendant in the case at bar, that one sugar refiner cannot be taxed by a different rule from another sugar refiner; or stronger still, that one sugar refiner cannot be taxed while another is wholly exempted.

We respectfully submit that the business of sugar refining carried on by defendant constitutes defendant a manufacturer, and that if the Court shall so conclude, it should so hold and apply Article 206 of the Constitution of the State of Louisiana to such conclusion. If, on the other hand, the Court shall not so conclude, then we submit that the law under which defendant is sought to be taxed denies to defendant the equal protection of the laws of the State of Louisiana and is in conflict with the Fourteenth Amendment to the Constitution of the United States; and that the judgment of the Supreme Court of Louisiana herein brought up for review should be reversed.

Respectfully submitted,

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